



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

Mr. Wm. Charles Bundren, Esq.
Stemmons Place, Suite 1260
2777 Stemmons Freeway
Dallas, Texas 75207

OR95-380

Dear Mr. Bundren:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27904.

The City of Bastrop ("the city") received a request for numerous records. You say the city has agreed to make available some of the requested records. However, you say that based on sections 552.101, 552.102, 552.103, 552.107, and 552.117 of the Government Code, the city seeks to withhold from required public disclosure the following records:

1. The employment and personnel files of the City Manager, Chief of Police, Fire Chief, City Secretary, Finance Director, Water and Waste Water Director, Public Works Director, Building Official, and Library Director;
2. Invoices, bills or statements for legal services provided by outside legal counsel [for the city].

With regard to the first item, however, we note that the requestor does not seek the entire employment or personnel file of the named city employees. Rather, the requestor seeks:

1. All reports, correspondence, memoranda and other written documents constituting travel and other expense reimbursement reports submitted by [the named city employees] . . . ;
2. . . . [E]mployment application or similar such document submitted to the City of Bastrop or its representative for consideration for [each of the individuals indicated in item 1 above].

Thus, with regard to personnel file information, we address the public availability of only the requested information, *i.e.* employment applications and similar documents that the applicant submitted to the city for consideration when the applicant applied for employment.¹

Section 552.117(1) of the Government Code² excepts from required public disclosure

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Section 552.117(1)(B) automatically protects from required public disclosure the home address or home telephone number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Non-peace officer employees, however, must exercise their option to publicly disclose their address and telephone number, in accordance with section 552.024 of the Government Code in order to obtain the protection of section 552.117(1)(A). *See* Open Records Decision No. 530 (1989).

Consequently, the city must withhold the home address and telephone number of those employees who are peace officers as defined by article 2.12 of the Code of Criminal Procedure. The city must also withhold the home addresses and telephone numbers of the other city employees who have chosen not to allow public access to their addresses and phone numbers in accordance with section 552.024 of the Government Code.

¹The information you enclosed does not include any information about expense reimbursement. Thus, we assume that, if you have not already done so, you will release all information about expense reimbursement.

²Section 552.301 of the Government Code establishes a ten-day deadline for a governmental body to request an open records ruling from the attorney general. If the governmental body does not request a decision within that time, the information will be presumed to be open to the public, and only a compelling interest can overcome that presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). We note that the city raised section 552.117 after the ten-day deadline. Letter from Wm. Charles Bundren to Madeleine Johnson (Aug. 3, 1994). The home addresses and home telephone numbers are, therefore, presumed to be open to the public. This presumption of openness is overcome where the information is deemed confidential by law or where the interests of a third party are at stake. *See* Open Records Decision No. 552 (1990). Here, the interests of third parties, the city employees, provide a compelling reason for nondisclosure.

Former home addresses and telephone numbers of public employees are also excepted from required public disclosure under section 552.117 (1)(A). Open Records Decision No. 622 (1994).³

The city seeks to withhold the application information under section 552.102(a) of the Government Code, which reads in part as follows:

Information is excepted from [required public disclosure] . . . if it is information in a personnel file, *the disclosure of which would constitute a clearly unwarranted invasion of personal privacy*, [emphasis added].

Not all information in a personnel file is excepted under this provision; disclosure of the information must constitute an unwarranted invasion of personal privacy for section 552.102 to apply. Such an invasion occurs only if the release of the personnel file information would cause an invasion of privacy tort under the standards of *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Common-law privacy protects information if (1) it contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668.

Information about public employees, including name, position, qualifications, experience, and educational level is not private information. See Open Records Decision Nos. 444 (1986) at 3; 342 (1982) at 3. Moreover, the public has a legitimate interest in such information. See Open Records Decision No. 444 (1986). We conclude that the applications and any other information the applicant submitted when applying for employment,⁴ are not protected under common-law privacy. Accordingly, the city may not withhold the information from public disclosure based on section 552.102(a) of the Government Code.

However, we note that some of the applications contain the social security number of the applicant. These social security numbers may be confidential under federal law, as we will explain.

³We also note that the character of the addresses and telephone number as public is determined as of the time the request for information was made. Therefore, a governmental body may not solicit employee preferences in response to a request for information under the Open Records Act. See Open Records Decision No. 530 (1989).

⁴We are not able to ascertain the precise information the applicants submitted when applying for employment. Of the information you enclosed, it seems likely that the resumes and applications were submitted, and possible that copies of various certificates for completion of various instructional courses may have also been submitted.

The 1990 amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential a social security number obtained or maintained by any "authorized person" pursuant to any provision of law enacted on or after October 1, 1990. Open Records Decision No. 622 (1994) at 3. This provision may apply to social security numbers obtained by a city in a personnel file. *See id.* at 4. However, it is not apparent to us that any of the social security numbers here were obtained or are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. Therefore, we have no basis for concluding that the social security numbers were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code.

We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that it has not obtained or maintained any of the social security numbers pursuant to any provision of law, enacted on or after October 1, 1990.

You assert that sections 552.101, 552.103, and 552.107(1) of the Government Code except from required public disclosure copies of the requested attorney fee bills and checks from the city for legal services rendered. Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law. You cite no law that makes the requested information confidential. Nor are we aware of any law that would do so. We conclude that the city may not withhold the fee bills and checks under section 552.101 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You inform us that the city is involved in pending litigation with the requestor and enclosed a copy of Plaintiff's Original Petition in *City of Bastrop v. Westword Communications, Inc., d/b/a The Bastrop Advertiser*, No. 21,329 (Dist. Ct. of Bastrop County, 335 Judicial Dist. of Texas). In that petition, the city requests a declaratory judgment from the court regarding the release of certain information requested under the Open Records Act on May 27, 1994.

The requested information at issue in the lawsuit is "all reports or other public documents reflecting employee disciplinary actions involving the Bastrop Police Department during the current year [1994]."

You do not explain, nor is it apparent, how the bulk of the requested fee bills and checks relate to the pending litigation concerning the release of information to the Bastrop Advertiser. However, we have located one invoice, which does seem to relate to the pending litigation. That invoice is invoice #10323, dated July 7, 1994, from you to the city. You marked this invoice as exhibits 001278 through 001281. The description of the legal services performed on this bill relate to the pending litigation. Therefore, the city may withhold from required public disclosure these descriptions based on section 552.103(a) of the Government Code.⁵ The remaining information on the bills, such as the amount of time spent, the amount charged, and the amount charged for other costs, does not relate to issues in the pending litigation. Therefore, section 552.103(a) does not apply to the remaining information on invoice #10323 and it must be released. In addition, section 552.103(a) does not apply to any of the other fee bills or checks.

Finally, we consider whether the city may withhold the requested fee bills and checks under section 552.107(1) of the Government Code. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

This exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990) (copy enclosed). Thus, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* Thus, a governmental body may not withhold fee bills in their entirety under this exception. *See id.*

When you originally sent us copies of the fee bills, we returned them to you with instructions to "mark the documents as to what specific portions of the information consist of client confidence and what portions consist of attorney advice or opinion."

⁵In reaching this conclusion, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Letter from Robert W. Patterson to William Charles Bundren, Esq. (Aug. 16, 1994). You returned the fee bills with markings on each page that state that "all of the information contained on this [fee bill] page is exempt from public disclosure pursuant to . . . sections 552.101, 552.103 and 552.107 [of the Government Code]"

You have not marked the portions of the fee bills that reveal attorney advice and opinion or client confidences as you are required to do in order for section 552.107(1) to apply. See Open Records Decision No. 589 (1991). We, therefore, conclude that you may not withhold any information on the fee bills under section 552.107(1) of the Government Code.

Nor may you withhold the copies of the checks for legal services rendered to the city. The information on the checks does not reveal a client confidence or attorney advice or opinion. The city may not withhold these checks under section 552.107(1) of the Government Code, and they must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MRC/rho

Ref.: ID# 27904

Enclosures: Submitted documents
Open Records Decision No. 574 (1990)

cc: Mr. Davis McAuley
Editor
The Bastrop Advertiser
P.O. Box 459
Bastrop, Texas 78802
(w/o enclosures)